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**COMMENT:**  
**BRIDGING THE GAP IN THE HOPES OF  
ENDING FEMALE GENITAL CUTTING**

*Kirsten Bowman*<sup>1</sup>

*"The phone rang one cloudy afternoon and I knew I had to answer that call. It was somebody calling for Oprah Winfrey. She is a powerful businesswoman and I respect that.*

*We are putting together a program on sanctioned violence against women around the world' the voice on the other end of the line said. 'We would like to have you on the show. Part of the broadcast will be on empowering women.'*

*'Do you want me to talk about FGM?'*

*'Female genital mutilation will be one of the issues we cover' she said, 'but Calista Flockhart is going to interview women in Africa about that.'*

*'Calista Flockhart?' I said.*

*'She's the actress who plays Ally McBeal on television.'*

*'Oh,' I said, but I thought, what does she know about FGM?*

*If it wasn't FGM I couldn't imagine what I could say or why Oprah would want to hear anything from me.*

*'We would like you to do the segment called: Remember Your Spirit.'*

*'Spirit?' I asked, 'not FGM?' I didn't get it; I felt like an elephant trying to see its backside.*

*'Yes,' the woman said, 'we think you would be perfect for our segment on remembering your spirit.'*

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*I was astonished that they didn't want me to do FGM. The last thing I had at that time in my life was spirit. I was a milk basket in a drought, all dried up with nothing good inside. I couldn't understand why Oprah Winfrey wanted me to talk about spirit and have a white girl who was never infibulated talk about FGM.”<sup>2</sup>*

Why was a western woman with absolutely no experience chosen over a survivor of the procedure to speak as an expert about it on the Oprah Winfrey show? Why do western woman believe that they have any sort of right to speak with even a hint of authority on the subject of Female Genital Cutting (FGC)? And, do these western women have a positive impact on eradicating the practice of FGC or do they compound the problem by inciting the cultural relativism argument and thus defeating the purpose of their statements? These are questions that have been mulled over, debated, heatedly argued and passionately decided in discussions and written commentaries over the past decade. Women, individuals and organizations from western countries believe passionately in their ability and duty to fight for the rights of women around the globe facing abuses that they may not be able to defend themselves against. Their argument is strong. Muslims, on the other hand, often feel very strongly that their culture and way of life is being attacked by western ideology. This western ideology, it is believed, is bent on forcing their cultural practices and norms upon the rest of the world, while thumbing their noses at traditions and practices held sacred to many non-western cultures.

Within this raging debate lies the question: where does the role of international law and the United Nations fall? It is important to understand whether the UN is seen as a neutralizing force or if international law is seen as another representation of western cultural beliefs that weaken the effectiveness of international law by requiring

compliance to rules that go against a large population's cultural values. This paper seeks to explore these perplexing questions, searching to outline the role of western NGOs, the UN and international law as a whole, and finally to outline the most effective roles for each of these entities in the fight for the eradication of FGC.

## I. THE PRACTICE OF FGC

### *Procedure*

FGC is the practice of removing parts of a woman's genitalia, ranging from the removal of the clitoral hood, to, in its most severe form, the removal of the entire clitoris, the removal of the lips of both labias and the sewing together of the two sides with thorns or needles.<sup>3</sup> The procedure is usually performed without any anesthesia and under unsanitary conditions.<sup>4</sup> This procedure can result in a plethora of medical difficulties for the girl, or later in life, the woman, including hemorrhaging, infection, sterility, painful intercourse, a greater chance of contracting HIV/AIDS, childbirth difficulties and death.<sup>5</sup>

Three types of FGC are performed.<sup>6</sup> The first is referred to as "sunna" meaning obedience in Arabic, and involves a relatively small portion of women.<sup>7</sup> This procedure involves the removal of the hood of

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<sup>2</sup> WARIS DIRIE & JEANNE D'HAEM, *DESERT DAWN* 29 (Virago Press 2002).

<sup>3</sup> See *Study on Traditional Practices Affecting the Health of Women and Children: Final Report of Mrs. Halima Embarek Warzazi*, Sub-Comm'n on Prevention of Discrimination and Prot. of Minorities, Comm'n on Human Rights, U.N. ESCOR, 43d Sess., Agenda Item 4, at 3, U.N. Doc. E/CN.4/Sub.2/1991/6 (1991).

<sup>4</sup> See *id.*; See also Layli Miller Bashir, *Female Genital Mutilation in the United States: An Examination of Criminal and Asylum Law*, 4 AM. U. J. GENDER & L. 415, 421 (1996).

<sup>5</sup> See World Health Organization, *Female Genital Mutilation*, at <http://www.who.int/mediacentre/factsheets/fs241/en/> (June 2000).

<sup>6</sup> See MINORITY RIGHTS GROUP INTERNATIONAL, EFUA DORKENOO & SCILLA ELWORTHY, *FEMALE GENITAL MUTILATION: PROPOSALS FOR CHANGE* 7 (3d ed. 1992).

<sup>7</sup> See *id.*

the clitoris only and is the least severe form of FGC practiced today.<sup>8</sup> The second form, “excision,” is more severe and is the most common: approximately 80% of the populations practicing FGC impose this form.<sup>9</sup> Excision involves the removal of the clitoris, the removal of all or part of the labia minora, and, in some cases, the cutting of the labia majora.<sup>10</sup> The third type of FGC procedure, “infibulation,” is the most severe form and is practiced on approximately 15% of the population of women and girls who are cut.<sup>11</sup> This procedure first removes the clitoris as well as the labia minora and at least two thirds of the labia majora.<sup>12</sup> The edges of the labia majora are sewn together with twigs, thorns, silk or other materials, leaving the smallest opening possible.<sup>13</sup> The girl or woman is then bound and left unable to move, sometimes for up to 40 days, while the edges of the skin heal and grow together, leaving only a very small opening for the passage of urine and menstrual blood.<sup>14</sup> The large majority of these procedures are done without any anesthesia and in unsanitary conditions leading to an array of concerning medical complications.<sup>15</sup>

Although the exact ritual or procedure varies, a common scenario involves girls ranging from four to eight.<sup>16</sup> Where FGC is carried out as part of an initiation ceremony, it is likely carried out on all the girls in the

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<sup>8</sup> See Fran P. Hosken, *Female Genital Mutilation: Strategies for Eradication*, at <http://www.nocirc.org/symposia/first/hosken.html> (March 1-2, 1989) ; see also Erika Sussman, Note, *Contending with Culture: An Analysis of Female Genital Mutilation Act of 1996*, 31 CORNELL INT'L L.J. 193, 196-203 (1996).

<sup>9</sup> See Alexi Nicole Wood, *A Cultural Rite of Passage or a Form of Torture: Female Genital Mutilation from an International Law Perspective*, 12 HASTINGS WOMEN'S L.J. 347, 354 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See Layli Miller Bashir, *Female Genital Mutilation in the United States: An Examination of Criminal and Asylum Law*, 4 AM. U. J. GENDER & L. 415, 421 (1996).

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See Amnesty International, *Section One: What is Female Genital Mutilation?*, at <http://web.amnesty.org/library/index/ENGACT770061997> (last visited Feb. 2004) [hereinafter Amnesty].

community who belong to a particular age group.<sup>17</sup> Often the girls who undergo the procedure do not know or only have a vague idea, based on community gossip of what will happen to them. Generally, only women are allowed to be present during the procedure.<sup>18</sup> As the procedure begins the girls are immobilized, most likely held down by the women of the community, often including members of their families, with their legs held open.<sup>19</sup> A number of instruments may be used in place of a knife, including broken glass, a razor blade, or even a sharpened rock.<sup>20</sup> When done in groups, the same instrument is commonly used to perform the procedure on all of the girls or women.<sup>21</sup> This is of particular concern because the cutting involves a great amount of blood loss, resulting in an extremely bloody procedure and a great amount of blood passing between the girls or women involved.<sup>22</sup>

### *Geography*

The procedure is most prevalent in Africa, the Middle East and parts of Asia, and is mainly associated with Muslim traditions although non-Muslims have practiced the procedure as well.<sup>23</sup> It also occurs, mainly among immigrant communities, in parts of Asia and the Pacific, North and Latin America, and Europe.<sup>24</sup> According to Amnesty International, an estimated 135 million of the world's girls and women have undergone genital cutting and every day approximately 6,000 girls around the globe are at risk, equaling 2 million women a year.<sup>25</sup> It is

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See Bashir, *supra* note 13, at 421.

<sup>20</sup> *Id.*

<sup>21</sup> See Fran P. Hosken, *Female Genital Mutilation: Strategies for Eradication*, at <http://www.nocirc.org/symposia/first/hosken.html> (March 1989).

<sup>22</sup> See *id.*

<sup>23</sup> See Amnesty, *supra* note 16.

<sup>24</sup> See *id.*

<sup>25</sup> *Id.*

practiced in at least 28 African countries, and among Muslim populations in Indonesia, Sri Lanka and Malaysia.<sup>26</sup> In the Middle East, FGC is practiced in Yemen, Oman, United Arab Emirates and Egypt where it is estimated that approximately 97% of girls are subjected to the practice.<sup>27</sup> Although the practice is known to occur in industrialized, western nations, it is mainly in immigrant populations and is often performed illegally since most western nations have some variation of laws against performing FGC. This makes it difficult to find figures on how common the practice is in these countries.<sup>28</sup>

### *Effects*

The physical effects of the procedure are enormous and can be extremely dangerous. At the time of the procedure shock, hemorrhaging and damage to surrounding organs is common.<sup>29</sup> Severe infection is likely due to the unsanitary conditions in which the procedure is performed.<sup>30</sup> Due to obstructed flow of urine and menstrual blood, chronic infections and internal damage, including infertility, are common long term effects.<sup>31</sup> Sexual intercourse is extremely painful and often bloody, with some women reporting the need to be cut open before intercourse can even take place.<sup>32</sup> In a study in Sudan, 15% of the women stated that they had to be cut open before intercourse.<sup>33</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> Susan A. Dillon, Comment, *Healing the Sacred Yoni in the Land of Isis: Female Genital Mutilation is Banned (Again) In Egypt*, 22 HOUS. J. INT'L L. 289 (2000).

<sup>28</sup> See Amnesty, *supra* note 16.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Lightfoot-Klein, H., *The Sexual Experience and Marital Adjustment of Genitally Circumcised and Infibulated Females in the Sudan*, 26 J. SEX RES. NO. 3, at 375-392 (1989).

A modern health concern that grows greater with each passing day is the high likelihood of spreading HIV.<sup>34</sup> Both during the procedure, when the same bloody instrument is used, and then again during intercourse when difficulty in penetration often leads to a woman being ripped during intercourse and a man's skin chaffing so badly that he, too, bleeds, the concern of HIV spreading is real and serious.<sup>35</sup> Childbirth presents particular problems for both mother and child as a mother can die while trying, without success, to push a baby through such a small opening, and a child's skull can literally be crushed during the process.<sup>36</sup> Health care workers, particularly in western countries where they are not schooled in the issues surrounding FGC, are often inadequately prepared to deal with these issues during the birth process and fail to recognize or know that they must help the woman by cutting her in order to get the baby out.<sup>37</sup> Finally, after childbirth, many women seek to please their husbands by being re-stitched and begin the process all over again.<sup>38</sup> The constant cutting and re-stitching of a woman's genitals with each birth can result in tough scar tissue in the genital area.<sup>39</sup>

### *Why the Practice Continues*

Cultural identity, custom and tradition are by far the most frequently cited reasons for practicing FGC.<sup>40</sup> Jomo Kenyatta, the late President of Kenya, argued that FGC was inherent in the initiation process

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<sup>34</sup> Oluyemisi Bamgbose, *Legal and Cultural Approaches to Sexual Matters in Africa: The Cry of the Adolescent Girl*, 10 U. MIAMI INT'L & COMP. L. REV. 127, 132 (2002).

<sup>35</sup> *Id.*

<sup>36</sup> See Wood, *supra* note 9, at 365.

<sup>37</sup> See *id.*

<sup>38</sup> Melissa A. Morgan, *Female Genital Mutilation: An Issue on the Doorstep of the American Medical Community*, 18 J. LEGAL MED. 93, 99 (1997).

<sup>39</sup> *Id.*

<sup>40</sup> See Amnesty, *supra* note 16.



which is in itself an essential part of being Kikuyu, to such an extent that "abolition . . . will destroy the tribal system".<sup>41</sup> Many people in FGC-practicing societies, especially traditional rural communities, regard FGC as so normal that they cannot imagine a woman who has not undergone it.<sup>42</sup>

FGC is often thought of as necessary in order for a girl to become a woman, and the procedure is part of a tribal ritual to welcome girls into adulthood.<sup>43</sup> In many societies, an important reason given for FGC is the belief that it reduces a woman's desire for sex, therefore reducing the chance of sex outside marriage.<sup>44</sup> The ability of un-cut women to be faithful through their own choice is doubted. Therefore, in many FGC-practicing societies, it is extremely difficult, if not impossible, for a woman to marry if she has not undergone cutting.<sup>45</sup> As one community leader from Kenya explained, "Circumcision makes women clean, promotes virginity and chastity and guards young girls from sexual frustration by deadening their sexual appetite."<sup>46</sup>

Cleanliness and hygiene are commonly cited reasons for performing the procedure and myths abound regarding the horrors that await those who have not been cut.<sup>47</sup> These myths range from stories that a clitoris is evil and will poison the penis of a man who touches it, to the myth that if the clitoris is not excised from the body it will grow continuously, making the woman masculine rather than feminine.<sup>48</sup>

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<sup>41</sup> KENYATTA, J., *FACING MOUNT KENYA: THE TRIBAL LIFE OF THE KIKUYU* (Vintage Books ed. 1965).

<sup>42</sup> See Amnesty, *supra* note 16.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> DEVELOPMENT FORUM, KATUMBA, R., *KENYAN ELDERS DEFEND CIRCUMCISION* 17 (1990) (Mrs. Njeri who is a defender of the practice in Kenya made this statement to explain the reason behind the continued practice in her community).

<sup>47</sup> Amnesty, *supra* note 16.

<sup>48</sup> *Id.*

A final reason given for the continuation of the practice of FGC is a religiously based one, despite the fact that FGC predates the Muslim religion and that it is not practiced by the majority of Muslims.<sup>49</sup> Still, in the Muslim communities where FGC is practiced, religion is often cited as the reason.<sup>50</sup> Most Islamic leaders, while agreeing that FGC is not part of their religion, are not completely unanimous on the subject. The Qur'an does not mention FGC anywhere in its teachings, but some Muslims follow quotes attributed to the prophet Mohammed which refer to FGC and counsel followers to "reduce but not destroy" the clitoris.<sup>51</sup>

### *Legality of the Practice*

Currently, the practice is outlawed in some form or another in many western countries.<sup>52</sup> The United States, France, Great Britain and Sweden have all enacted specific legislation to prohibit the procedure in their respective country.<sup>53</sup> Beyond that, many countries use existing laws to prosecute FGC, arguing that the practice falls within the scope of their already existing structures. One example of this is Germany, where perpetrators of the practice have been prosecuted under existing child abuse legislation.<sup>54</sup>

Within Africa, many of the 28 countries practicing FGC have formally made the procedure illegal,<sup>55</sup> although in many cases these rules of law are not enforced.<sup>56</sup> In fact, when they have tried to enforce them,

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See Bashir, *supra* note 13, at 430.

<sup>53</sup> See *id.* at 433.

<sup>54</sup> See Dillon, *supra* note 27, at 302.

<sup>55</sup> Lori Ann Larson, Note, *Female Genital Mutilation in the United States: Child Abuse or Constitutional Freedom*, 17 WOMEN'S RTS L. REP. 237, 247 (1996).

<sup>56</sup> See Parliamentary Campaign "Stop Violence Against Women": Female Genital Mutilation, *Legislation and other National Provisions at* <http://www.ipu.org/wmn-e/fgm-prov.htm>; Amnesty

African countries have met with so much resistance that they have often retreated. One example is Sudan, where despite the passage of a law in 1946 outlawing the practice, over 80% of Sudanese women have been infibulated.<sup>57</sup> When the government tried to enforce the law and made some initial arrests, there was such a large public outcry that they reformed the law to allow “sunna,” the mildest form of the practice.<sup>58</sup> Another example is Kenya, where, despite President Daniel arap Moi’s announced ban on FGC in 1982, it is still being practiced.<sup>59</sup> A 1991 survey in Kenya revealed that 100% of women over fifty and 78% of adolescents had been subject to the procedure.<sup>60</sup>

The African region as a whole has developed doctrines that seek to put an end to the practice. The African Charter on Human Rights prevents torture and refers to the protection of women and children’s rights in a similar fashion as those outlined in international doctrines.<sup>61</sup> Further, the African Charter on the Rights and Welfare of the Child states in article 21 that “appropriate measure can be taken in order to eradicate traditional practices and customs which are prejudicial to the child.”<sup>62</sup> Although these charters have been signed and ratified by many of the countries where the practice continues, such as Sudan and Nigeria, they have not proven to have any significant effect on curtailing the practice.

Internationally, there have been efforts through various treaties and conventions to legally put an end to the practice. By using human right instruments such as the Convention for the Rights of the Child, the

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International, *Female Genital Mutilation in Africa, Information by Country at* <http://www.amnesty.org/ailib/intcam/femgen/fgm9.htm>.

<sup>57</sup> See Dillon, *supra* note 27, at 303.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 306.

<sup>60</sup> *Id.* See also Cesar Chelala, *An Alternative Way to Stop Female Genital Mutilation*, LANCET, July 11, 1998, at 126.

<sup>61</sup> Amanda Cardenas, *Female Circumcision: The Road to Change*, 26 SYRACUSE J. INT’L L. & COM. 291, 305 (1999).

Universal Declaration of Human Rights and the Convention on the Elimination of all Forms of Discrimination Against Women, international advocates have tried to put a neutral face on the rules of law to legitimize them in the eyes of the Muslim community. However, as will be explored in further detail below, this approach has not been completely successful.<sup>63</sup>

## II. WESTERN ATTEMPTS TO STOP THE PRACTICE OF FGC

### *A discussion of cultural relativists and universal human rights.*

The scholarly argument surrounding western values and feminist efforts to eradicate FGC has centered on the discourse between cultural relativism and a universalist approach, which is often associated with a western ideology.<sup>64</sup> Cultural relativists believe that the rules and regulations surrounding human rights law should depend on the cultural context in which they are imposed.<sup>65</sup> Further, cultural relativists argue that a person's knowledge and understanding of culture depends upon their upbringing and experiences; that *all* cultures, not simply the western ones, are equally valid.<sup>66</sup> This argument has long been used to counter human rights norms, which relativists believe are established by a western ideology. Westerners, they argue, established norms based on their own idea of right and wrong and fail to recognize that "notions of right and wrong and moral rules necessarily differ throughout the world because the culture in which they inhere themselves differ."<sup>67</sup> The core of the argument declares in no uncertain terms that "there are no transcendent or trans-cultural ideas of right and hence, no culture (whether or not in the

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<sup>62</sup> *Id.*

<sup>63</sup> See Julie Dimauro, Note, *Toward a More Effective Guarantee of Women's Human Rights: A Multicultural Dialogue in International Law*, 17 WOMEN'S RTS. L. REP. 333, 341 (1996).

<sup>64</sup> See Shefali Desai, *Hearing Afghan Women's Voices: Feminist Theory's Re-Conceptualization of Women's Human Rights*, 16 ARIZ. J. INT'L & COMP. L. 805 at 809 (1999).

<sup>65</sup> *See id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

guise of enforcing international human rights) is justified in attempting to impose on others what must be understood as its own ideas.”<sup>68</sup> The cultural relativists’ argument necessarily rejects not only western ideology, but universal norms set by intergovernmental agencies such as the UN, thereby effectively rejecting any standards outside of each culturally set mandate.<sup>69</sup>

Universalism, on the other side of the argument, is the belief that human rights are universal to each and every citizen of the world and must be protected as such. This argument does not reject or cast out culture, it simply states that there are certain rights that are so fundamental to a human life that they must exist for everyone despite cultural differences.<sup>70</sup> Because the existence of modern human rights standards are rooted in the United Nations, it is an obvious leap on both sides of the ideological landscape to believe that the UN and those that advocate and believe in their system of human rights are effectively universalists. Likewise, those that advocate from a cultural point of view must reject the system of human rights put in place by the UN and search to find their own set of values based on their culture identity and belief systems.<sup>71</sup>

Both sides of this argument have very valid points and the debate between these ideologies may continue for decades to come. It is clear, however, that it is necessary to push past this ideological disagreement in order to act effectively for the various sectors of the global population who seem caught in the crossfire without advocates or the ability to rise above oppressive situations. This ideological disagreement has affected the victims of FGC in a profound way. The universalists, mainly comprised

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<sup>68</sup> *Id.* at 810.

<sup>69</sup> *See id.*

<sup>70</sup> *See* Desai, *supra* note 64, at 808.

<sup>71</sup> *See id.* at 810.

of western advocates, continue to push for their strong involvement in the activities centered around the eradication of FGC despite the cultural reluctance to do this.<sup>72</sup>

The cultural relativists, mainly comprised of Muslims who feel that they are fighting with every breath to hold on to their ideals against an ever invasive western society, have chosen to hold on to FGC with great fervor.<sup>73</sup> These Muslims, armed with a renewed sense of fear and hatred for the western world cling to their traditions and any hint of a western influence on these traditions builds up their armor even more so. Some of these cultural relativists are religious and political leaders, but many of them are also “would-be” feminists advocates who believe in rights for women but will not place themselves on the side of western ideology against their own people and traditions.<sup>74</sup> Even those who have spoken out against the practice have felt an inner sense of disloyalty. Waris Dirie, who is a Somalian model and UN special ambassador for Women’s Rights in Africa, writes of her inner struggle between cultural relativism and universalism.

*I tried to explain what had happened to me as a little girl in Somalia and my difficulties with urination and menstruation...My mother believed, like all my people, that infibulation was ordered in the Koran. Talking about my genital mutilation was both a blessing and a curse. I was glad people wanted to do something about this cruel custom, but over and over I had to relive all the pain and misery it caused in my life. Every time I spoke out about female genital mutilation I spoke against something my*

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<sup>72</sup> See Tracey E. Higgins, *Anti-Essentialism, Relativism, and Human Rights*, 19 HARV. WOMEN’S L.J. 89, 96 (1996).

<sup>73</sup> See *id.*

<sup>74</sup> See *id.* at 90. “For example, although she acknowledged that substantial problems of overpopulation plague many Muslim countries including Pakistan, Prime Minister Benazir Bhutto joined with the Vatican in criticizing what she perceived as Western efforts to impose norms of radical individualism on the rest of the world.” *Id.*

*mother, my father and my people believe. I denounced my family and a tradition that was very important to them. I wanted to heal women who had been through this painful experience but it made me an enemy in my own country. There are things you don't talk about in my culture... It upset me when the attorney said that female circumcision was actually torture. My mother did not have me tortured. She thought she was making me a pure woman. One who would be a good wife and mother to her children and an honor to her family.*<sup>75</sup>

One clear example of this is seen within the very terms used to discuss the procedure. Female Genital Mutilation (FGM) has been the favored term used by the international community since the 1980's when the procedure came into full scrutiny and outcries began. The term was coined by a community that wanted to ensure their ability to convey both the true physical consequences of the procedure and that it not be associated with male circumcision since the procedures and ramifications are so radically different.<sup>76</sup> However, in perpetuating the use of this term western feminists have failed to recognize the shame and hurt they place on the communities that practice the procedure.<sup>77</sup> Deeming the practice mutilation implies that these communities are torturing and mutilating their young girls, which places these communities in a defensive position against an international community that they feel has demonized their cultural practices.<sup>78</sup> A better choice would be to move away from both the term "female circumcision," which might not convey the seriousness of the procedure, as well as from the term "female genital mutilation" and instead to begin to discuss the issue using the term female genital cutting (FGC). This is a more straightforward term and seeks to describe without

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<sup>75</sup> DIRIE & D'HAEM, *supra* note 2, at 13.

<sup>76</sup> See Cardenas, *supra* note 61, at 293.

<sup>77</sup> See *id.*

<sup>78</sup> See *id.*

placing moral judgments, thus creating a safe starting place from which both sides can at least discuss the issues.

In the end, this battle between ideologies only hurts the very people that each is trying to help. When western feminists continue to force treaties and laws upon the Muslim community, the result is actually more harmful. Those laws are not abided by and the treaties are not respected.<sup>79</sup> The Arab world feels threatened by a western set of values of which they want no part. The backlash reaction is a much tighter hold on continuing this practice, not only by Arab leaders but by the communities of women practicing FGC as well.<sup>80</sup> Muslim women are being told by their leaders that it is not the patriarchy or the elite which hinders them, but, rather, that the evil culprit is western ideology.<sup>81</sup> The small successes that have been achieved towards ending this harmful practice have occurred mainly under educational programs developed and implemented by Africans and Muslims themselves, with little to no collaboration from western advocates.<sup>82</sup>

### III. UNITED NATIONS LEGAL INITIATIVES

Other than the push for individual country legislation in the area of FGC, the bulk of the international legal work has been done through the UN and its accompanying bodies.<sup>83</sup> By exploring these attempts and determining their success rates, it is possible to see a pattern arising from the haze of frustration that surrounds the topic.

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<sup>79</sup> See *id.* at 305.

<sup>80</sup> See Erin L. Han, *Legal and Non-Legal Responses to Concerns for Women's Rights in Countries Practicing Female Circumcision: Debating Women's Equality*, 22 B.C. THIRD WORLD L.J. 201, 212 (2002) (book review).

<sup>81</sup> See Desai, *supra* note 64, at 810.

<sup>82</sup> See Dillon, *supra* note 27, at 302–308.

<sup>83</sup> See *id.* at 298.



Although there were a few early attempts to curb the practice of FGC, it wasn't until the UN Decade for Woman, from 1975 to 1985, that the issue came into view in a global context.<sup>84</sup> Since then, the UN has made various attempts to reduce the practice of FGC, including social and educational programs, and calls for legal and policy action. The four main legal mechanisms that the UN has used to deal with FGC include the Convention for the Rights of the Child (UNCRC), the Universal Declaration of Human Rights (UDHR), the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment (Torture Convention). Yet, each of these has failed to provide a strong, feasible solution for the eradication of the practice.

#### *Convention for the Rights of the Child*

Because FGC is often performed on young girls, mechanisms designed to protect children seem to be an obvious means by which to ban the practice: deem FGC a human rights violation.<sup>85</sup> The UNCRC mandates that children be given the "highest attainable standard" of health care.<sup>86</sup> The Convention also addresses dangerous practices that might affect the health of the child.<sup>87</sup> Article 24(3) requires all States to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."<sup>88</sup> In addition, there are three additional UNCRC articles with which female genital cutting

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<sup>84</sup> See Amnesty, *supra* note 16, at Section Seven: United Nations Initiatives.

<sup>85</sup> See Dimauro, *supra* note 63, at 341.

<sup>86</sup> Convention on the Rights of the Child, signed at New York, Nov. 20, 1989, entered into force, Sept. 2, 1990, G.A. Res. 44/25 (annex), U.N. GAOR, 44th Sess., Supp. No. 49, at 1, U.N. Doc. A/RES/44/49 (1990) [hereinafter CRC].

<sup>87</sup> *Id.* at art. 24(3).

<sup>88</sup> See Dimauro, *supra* note 63, at 341.

conflicts: Article 19, prohibiting child abuse;<sup>89</sup> Article 16, providing children a right to privacy;<sup>90</sup> and Article 37, forbidding the torture or cruel, inhuman or degrading treatment of children.<sup>91</sup>

In practice, this sounds like an effective means by which to manage this problem, but with further scrutiny it becomes clear why this convention has not served to curb the practice. It has worked to further alienate the communities that practice the procedure. By using a global instrument to label the practice of FGC as child abuse, it labels the mothers who practice FGC in these communities as perpetrators of the crime, not recognizing that many of these women view FGC as a practical means of ensuring their daughters a respectable place in their community.<sup>92</sup> Nonwestern women and communities are not very willing to embrace the idea that they and their ancestors have been committing child abuse throughout history, and reject the notion that they are not free to raise their children as they see fit. Governments also may reject the notion that the procedure is covered under the Convention. Although FGC appears to be covered as one of the prohibited cultural practices, state parties reply to this by showing the practice as a positive measure which promotes social conditioning as well as family and community stability which are ideals that are supported by the treaty.<sup>93</sup> Finally, by identifying FGC as a children's issue, women who have reached an adult age are not protected from the practice and may still be forced to submit by their families or future husbands.<sup>94</sup> All in all, while the UNCRC does give

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<sup>89</sup> "States Parties shall take all appropriate . . . measures to protect the child from all forms of physical or mental violence." CRC, *supra* note 85, at art. 19(1).

<sup>90</sup> "No child shall be subjected to arbitrary or unlawful interference with his or her privacy . . ." CRC, *supra* note 85, at art. 16(1).

<sup>91</sup> "States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment." CRC, *supra* note 85, at art. 37(a).

<sup>92</sup> See Dimauro, *supra* note 63, at 341.

<sup>93</sup> See Coffey, *supra* note 86, at 14.

<sup>94</sup> See *id.*

some support to the eradication of FGC, it has failed as a legal mechanism and has worked to further alienate and offend the non-western communities in which the procedure is practiced.

### *The Universal Declaration of Human Rights*

Western advocates for the eradication of FGC turn to the UN Declaration of Human Rights (UNDHR) itself as an instrument that protects women from the practice, condemning those who continue in the practice as violating international law and the UNDHR.<sup>95</sup> Many Human Rights advocates seek to use the UNDHR as a legally binding document on the entire global community, arguing that the document has been codified as customary international law, making it binding.<sup>96</sup> Anyone who violates the UNDHR would also be violating an international law.

Specifically, the Universal Declaration of Human Rights states that “all are equal before the law and are entitled without any discrimination to equal protection of the law.”<sup>97</sup> Article 25 specifies that “everyone has the right to a standard of living adequate for the health and well-being of himself” and “that motherhood and childhood are entitled to special care and assistance.”<sup>98</sup>

Many western advocates have used these passages to condemn countries that still participate in the practice, citing them as human rights violators. They insist that these societies do not afford motherhood and childhood special care and assistance. As one scholar stated, “FGM practicing societies are guilty of violating the Universal Declaration of Human Rights by failing to provide women and children with ‘special

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<sup>95</sup> See Leigh A. Trueblood, *Female Genital Mutilation: A Discussion of International Human Rights Instruments, Cultural Sovereignty and Dominance Theory*, 28 DENV. J. INT'L L. & POL'Y 437, 452 (2000).

<sup>96</sup> See *id.*

<sup>97</sup> *Universal Declaration of Human Rights*, G.A. Res. 217, U.N. GAOR, art. 7 (Dec. 10, 1948) [hereinafter *Universal Declaration*].

care' as stipulated in the Declaration. These violations constitute a breach of international law.”<sup>99</sup> By using this UN mechanism, Women’s Rights advocates turn the argument from a child abuse based one, to one premised on a women’s right to her sexual integrity. While this argument does highlight the effects of FGC, it also works to characterize the practice and the women on whom the procedure has been practiced as unfulfilled, incomplete and mutilated.<sup>100</sup> Alienating the women of communities which practice the procedure works to further the cultural divide rather than create a cross cultural dialogue which is necessary to move forward with any progress in the eradication process. This Declaration, without any specific bite against the practice, does nothing to promote cross-cultural communication and works to further alienate nonwestern communities.

*The Convention on the Elimination of All Forms of Discrimination  
Against Women*

CEDAW is often written of as one the best hopes for a legal instrument to aid in the eradication of FGC.<sup>101</sup> The Convention guarantees women a number of rights, including the right to adequate health care and the right to have their reproductive health protected.<sup>102</sup> Advocates of the eradication of FGC have used a health care argument to apply FGC to the convention.<sup>103</sup> Clearly, a practice that has such a horrific array of health consequences with little to no health benefits falls under this conventions mandate.<sup>104</sup> Further, CEDAW specifically addresses cultural concerns by stating that custom and tradition may not be used to excuse practices that

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<sup>98</sup> *Id.* at art. 25.

<sup>99</sup> See Trueblood, *supra* note 95, at 452.

<sup>100</sup> See Dimauro, *supra* note 63, at 342.

<sup>101</sup> See Han, *supra* note 80, at 206.

<sup>102</sup> See *id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

are forbidden by the convention.<sup>105</sup> However, CEDAW faces the same difficulties as most other human rights instruments do in enforcement. This Convention cannot be strictly enforced since most states remain unwilling to accord international jurisdiction to those entities which could mandate compliance with the terms of human rights treaties.<sup>106</sup> Further, many African States who may or may not deny the serious health consequences of the practice, continue to be offended by the notion that their customs and traditions are seemingly disposable and, often in signing these treaties, use reservations in order to allow them to continue practices in their countries that are deemed cultural and traditional in nature.<sup>107</sup>

*Convention Against Torture and Other Cruel, Inhuman or  
Degrading Treatment or Punishment*

Finally, advocates of international legal intervention look to the Torture Convention, which defines torture as any physical or mental act that is intentionally inflicted for any discriminatory reason.<sup>108</sup> Advocates for the end of FGC argue that because the practice causes severe physical and mental pain and is inflicted based on the discriminatory reason of simply being a woman, it is in violation of the Torture Convention.<sup>109</sup> This document is different than the others discussed because Article 2 of the convention contains an enforcement mechanism, which requires states to take action, whether legislative or judicial to prevent torture in their jurisdiction.<sup>110</sup> Advocates also use this document to prove that since the

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<sup>105</sup> *Id.*

<sup>106</sup> See Dimauro, *supra* note 63, at 343.

<sup>107</sup> *Id.*

<sup>108</sup> *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (1985), adopted Dec. 10, 1984, entered into force June 26, 1987, reprinted in 23 I.L.M. 1027 (1984), substantive changes noted in 24 I.L.M. 535 (1985) [hereinafter Torture Convention].

<sup>109</sup> See Wood, *supra* note 9, at 380.

<sup>110</sup> Torture Convention, *supra* note 108, at art. 2.

procedure of FGC falls under the definition of torture, countries that allow the practice are violating international law regardless of whether they are signatories to the Convention. This is because torture has been recognized as a violation of customary international law<sup>111</sup>

Still, the ability of these documents to have any true impact on the situation, even in cases where enforcement measures are built into the documents, is not realistic at this point. It is unrealistic to expect a country to criminalize a procedure in which a majority of the country participates. We cannot truly expect countries to condemn as criminals a majority of their populations for practicing a cultural tradition about which they have never been educated. To expect an entire country to rebel against their religious leaders where these leaders have a great influence on everyday life seems impractical. Further, international intergovernmental bodies have been slow to act on the issue. This is evident in the fact that the World Health Organization refused a request by the UN Economic and Social Council for an inquiry into the practice for two decades.<sup>112</sup> They reasoned that it was not within their mandate to look into cultural practices.<sup>113</sup> Even when the UN and its partnering bodies have begun to look into the issues surrounding FGC, they have taken a cautious approach, likely fearing they will be seen as a pro-western organizations that condemn Muslim culture and tradition.<sup>114</sup> These fears are valid since the actions that the UN has taken have been highly criticized within the Muslim communities.<sup>115</sup> Particularly, the use of UN legal mechanisms has been met with great resistance.<sup>116</sup>

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<sup>111</sup> Wood, *supra* note 9, at 380.

<sup>112</sup> Dillon, *supra* note 27, at 298.

<sup>113</sup> *Id.*

<sup>114</sup> *See id.*

<sup>115</sup> *See* Dimauro, *supra* note 63, at 341.

<sup>116</sup> *See id.*

#### IV. NON-LEGAL APPROACHES

There have been many attempts by Non-Governmental Organizations (NGOs) and Intergovernmental Organizations such as the UN, UNICEF and WHO to oppose the practice of FGM through non-legal means.<sup>117</sup> These efforts have been met with a greater degree of success over the past years.<sup>118</sup> Although there was an initial awareness of the practice of FGC occurring in African countries by the larger international community during the 1950's, the interest in inquiring about the effects of the practice did not arise until decades later.<sup>119</sup> It was another 20 years before a true international dialogue on the topic began.<sup>120</sup> In 1979, the WHO took up the subject by first conducting a seminar on "Traditional Practices Affecting the Health of Women and Children."<sup>121</sup> In March of 1980, the WHO and UNICEF issued a joint plan of action to address the issues and risks surrounding FGC.<sup>122</sup> This was a good first step, although it was still evident that the organizations had some ambivalence about taking on the topic. While recommendations were made, there was no allocation of funds to sponsor efforts, and any responsibility for action was given to the individual nations themselves.<sup>123</sup> By August of 1982 the WHO took another tentative step forward and issued a statement to the UN Human Rights Sub-Commission (UN Sub-Commission) letting national governments know that it was willing to support them in any eradication efforts, but that it would only sponsor government sanctioned efforts in this regard.<sup>124</sup>

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<sup>117</sup> See Dillon, *supra* note 27, at 298.

<sup>118</sup> See *id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Dillon, *supra* note 27, at 299.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 300.

It was during the early 1980's that the UN began to take up the issue more aggressively, forming working groups on Traditional Practices Affecting the Health of Women and the Girl Child and sponsoring seminars in which African countries would come together to discuss the issues and difficulties surrounding FGC.<sup>125</sup> In February of 1984, one of these seminars resulted in the formation of the Inter-Africa Committee (IAC) whose mission was to help in the abolition of harmful traditional practices.<sup>126</sup> This committee was made up of twenty-one African States.<sup>127</sup> It is important to note that at its inception, the IAC warned against "untimely haste, which would result in rash legal measures that would never be enforced."<sup>128</sup> Unfortunately, this warning seems to have come to fruition as over the past two decades the majority of legal measures implemented whether by individual countries or internationally seem to have failed miserably. In 1997, the WHO, UNICEF and the UN Population Fund issued a joint statement specifying strategies for the eradication of FGC and in March 1998, the UN began a three-year campaign to eliminate the practice worldwide.<sup>129</sup>

Despite the best intentions and continued efforts of these organizations, these gestures have been largely ineffective. The practice has continued and the sweeping statements of international organizations removed from the communities which practice FGC has done little to curb it. If anything, these statements have worked to put the African states on the defensive, some feeling pressured into making laws that incite the

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<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Dillon, *supra* note 27, at 300.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 301.



populations of these countries into outcries of protest, and were created without the intent or resources to enforce in the first place.<sup>130</sup>

When the IAC warned against “untimely haste,” one woman in particular within the UN system understood the importance of the warning. Halima Embarek Warzazi, a Moroccan Human Rights expert who has served on the UN Sub-Commission for decades, was appointed the UN special rapporteur on traditional practices that affect the health of women and girls. Through the working group, Ms. Warzazi has worked tirelessly over the years through slow-moving dialogues of understanding with the individual countries.<sup>131</sup> Her approach is to work with the leaders of the African Nations and the Muslim communities to slowly build a consensus of support for the eradication efforts.<sup>132</sup>

One example of her ability to work within government structures is the ban by Egypt’s Council of State in 1998.<sup>133</sup> Rather than an empty law propagated by an African government with no intention or ability to enforce it, this ban on FGC by the Egyptian Court is significant because it comes from a religious body. Warzazi states that the decision “puts an end to the manipulation of Islam and constitutes a definite blow to all those who justify circumcision on the basis of religion.”<sup>134</sup> In its ruling the Council stated that “from now on, it is forbidden to practice excision, even with the consent of the girl and her parents...The circumcision of girls is not an individual right that emanates from the Sharia (Islamic

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<sup>130</sup> See *id.* at 302-310.

<sup>131</sup> See *Preliminary Report of the Special Rapporteur on Traditional Practices Affecting the Health of Women and Children, Mrs. Halima Embarak Warzazi*, Sub-Comm’n on the Prevention of Discrimination and Prot. of Minorities, Comm’n on Human Rights, U.N. ESCOR, 47th Sess., at 5, UN Doc E/CN.4/Sub.2/1995/6 (1995) [hereinafter *Preliminary Report on Traditional Practices*].

<sup>132</sup> See *id.*

<sup>133</sup> See *Human Rights: Egypt Ends Female Genital Mutilation*, INTER PRESS SERVICE, Aug. 11, 1998, available at 1998 WL 5988706.

<sup>134</sup> *Id.*

law).”<sup>135</sup> Although the procedure persists in Egypt, obtaining support for its eradication from the religious community is a first and key step towards ending the practice. Much of Warzazi’s ability to work effectively on the subject matter is most likely in part due to her Moroccan and Muslim identity, thus making her a non-western voice, although she is still connected to what is thought of as a pro-western organization.

Ms. Warzazi’s slow and methodical approach also consists of working with country specific organizations that are looking at non-legal mechanisms to end the practice.<sup>136</sup> This seems to be where there has been the most success in eradicating the practice of FGC.<sup>137</sup> By understanding the roots of the practice and the communities in which it is practiced, it is easier to pinpoint possible reasons for its continuation and roadblocks to successful intervention. This is not something easily done by western scholars and legislation.<sup>138</sup> This grassroots approach works within the communities and promises the best chance of success in the coming years.<sup>139</sup> The programs developed in various African countries focus on education and economic policy.<sup>140</sup> There are training and information campaigns that work to provide health education workshops to prepare communities to educate and inform others on the dangers and issues surrounding FGC.<sup>141</sup> As well, there are projects directed at providing alternative employment, such as baking or dyeing, to circumcisers.<sup>142</sup> Finally, there are programs to focus on economic ways for women to support themselves, with the theory that if women feel they have other

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<sup>135</sup> *Id.*

<sup>136</sup> See Preliminary Report on Traditional Practices, *supra* note 131.

<sup>137</sup> See Dillon, *supra* note 27, at 302-310.

<sup>138</sup> See Han, *supra* note 80, at 213.

<sup>139</sup> See *id.*

<sup>140</sup> See Dillon, *supra* note 27, at 302-303.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

choices besides marriage, they will not feel forced to undergo FGC simply to survive economically.<sup>143</sup> While the latter two strategies have only recently developed as possible programs to stop the practice, educational programs have been in place since the late 1990's and are being used in countries currently.<sup>144</sup>

### *Country Specific Programs*

#### **1. Kenya**

Small inroads have been made into changing the practices in Kenya. While President Moi announced a ban of the practice in 1982, there was no government intervention and FGC continued to be practiced surreptitiously.<sup>145</sup> However, the Kenyan Maendeleo Ya Wanawake Organization and the Program for Appropriate Technology in Health conducted years of research into the extent of female genital cutting and its role in rural communities.<sup>146</sup> The result has been a program entitled Ntanira Na Mugambo or "circumcision through words."<sup>147</sup> This is a week-long counseling, training and education program which ends with a coming of age celebration for the young women. In place of the traditional cutting practice, the community enjoys dancing, feasting and gift exchanges together, welcoming the young girls as women into their community.<sup>148</sup> So far, the program has been conducted in thirteen communities and about 300 girls have received certificates of completion.<sup>149</sup> The key to this programs success may be that it involves

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<sup>143</sup> *Id.*

<sup>144</sup> *See id.*

<sup>145</sup> *See* Hosken, *supra* note 21; *see also* Melissa A. Morgan, *Female Genital Mutilation: An Issue on the Doorstep of the American Legal Community*, 18 J. LEGAL MED. 93, 104 (1997) (discussing that although a few individuals were initially arrested the cases were thrown out due to lack of specificity in the law as well as lack of parliamentary support).

<sup>146</sup> *See* Chelala, *supra* note 60, at 126.

<sup>147</sup> *Id.*

<sup>148</sup> *See id.*

<sup>149</sup> *Id.*

the entire community and family members, all of whom participate in designing the program.<sup>150</sup>

## 2. Uganda

The Sabiny Elders Association (SEA) was formed in Uganda in 1992.<sup>151</sup> This association represents the 161 clans of Uganda and its goal is to abolish harmful traditions practiced within their culture.<sup>152</sup> The campaign of the SEA works with sensitivity to Sabiny culture and uses education and information on health consequences to change social attitudes.<sup>153</sup> The campaign began by targeting the more conservative groups within the society and then later in the campaign outreach was extended to youth and the wider community at large.<sup>154</sup> The SEA sponsors an annual cultural day of dancing, music, plays and mimes which incorporates information on the practice of FGC and health information surrounding it.<sup>155</sup> People are encouraged to give gifts to girls to commemorate their passing into adulthood.<sup>156</sup> The SEA has achieved over a 36% reduction in FGC in the districts where the programs are in place. The program was the recipient of the 1998 UN Population Award.<sup>157</sup>

## 3. Senegal

The most interesting example of a county program achieving success in the elimination of FGC comes from Senegal. Tostan, which means 'break through,' is a program conducted in the native Wolof tongue

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<sup>150</sup> *Id.*

<sup>151</sup> See *UN Population Award Shared by Uganda Health Group, Family Planning Pioneer in Jamaica*, M2 PRESSWIRE, July 10, 1998, LEXIS, News Library Group File.

<sup>152</sup> *See id.*

<sup>153</sup> *See id.*

<sup>154</sup> *See id.*

<sup>155</sup> See Dillon, *supra* note 27, at 308.

<sup>156</sup> *See id.*

<sup>157</sup> See UN Population Award, *supra* note 151; Dillon, *supra* note 27, at 308.

rather than in the formal French and is run by Senegalese.<sup>158</sup> The program is comprised of eight two-month long modules on a wide variety of subjects. The modules specifically address women's health and FGC.<sup>159</sup> The approach is not a critical one; rather they present the health risks of the practice to women and children in order to educate them about the risks of continuing the practice.<sup>160</sup> Thus far, thirty-one villages have renounced the practice and the Tostan program is being conducted in another 250 villages.<sup>161</sup> The program was conceived by a Texan named Mollie Melching, who had lived in Senegal for twenty-three years.<sup>162</sup> While not ethnically African, she had immersed herself in the country and the culture enough to be able to work within to develop programs to achieve native success. Melching has been invited to develop programs for five other West African nations.<sup>163</sup>

## V. REDEFINING ROLES

It is clear that the status quo has not served its intended purpose and instead has incited rifts in a global population who otherwise would serve a common purpose and goal. Rather than continue on a path that divides the human rights and feminist communities into cultural armies bent on defeating each other, focus towards a common goal of eradicating a practice that harms the physical and mental health of large populations of the world's women is necessary. One thing that is clear is that to change the cultural practice in countries or nation states where FGC is regularly practiced, more than a simple prescription of legislation is

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<sup>158</sup> See *NPR All Things Considered: Female Circumcision Educators*, NPR, July 22, 1998, LEXIS, News Library, Script File.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

required. The change is needed at the local level within the areas of individual and social liberties for women.<sup>164</sup> The disapproval and concern at an international level through treaties and conventions has not brought about the needed change in attitude and behavior. In fact, this disapproval has led to a cultural conflict rather than a united front concerning the eradication of FGC. Often, when women oppose FGC in cultures where it is regularly practiced, they are seen as siding with the West to undermine the tradition and values of their societies.<sup>165</sup> The fight then becomes about power and domination masked by the excuse that a nation state must maintain its sovereignty against the control of other states.<sup>166</sup>

Rather than continuing down this failing path, it is important to take a step back, re-evaluate the situation and redefine individual roles toward the common goal. The first step in this assessment is to recognize that legal attempts to eradicate FGC have sorely failed. Both international and nation state-specific laws have been largely ignored and deemed unenforceable. Because these failed attempts have offended Muslim communities, it is necessary to pull back from their current use. In fact, the international legal community needs to remove itself from the conversation, and instead allow grassroots educational and alternative means programs to take center stage. By allowing the grassroots communities themselves to design and begin to implement a strategy towards the elimination of FGC, women of these communities are given back their voice and the barrier of cultural imperialism is taken away. By taking the cultural argument out of the conversation, the focus can once again return to the important task of creating a healthy and safe environment for all girls and women. It is imperative to not allow pride

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<sup>164</sup> Cardenas, *supra* note 61, at 308.

<sup>165</sup> *Id.* at 312.

<sup>166</sup> *Id.*

and an unyielding sense of right to overshadow the ultimate goal of eradication.

Further, cultures that are affected by the practice of FGC must be allowed to guide the efforts toward eradication. It is, in fact, necessary to recognize that African feminists generally prefer to work on the problem within their own communities, free from outside interference.<sup>167</sup> While this is a hard pill for western feminists to swallow, and their fervor to take a leading role in the campaign against FGC is well intentioned, it is imperative that they look objectively at the problem and understand that their insistence at continuing to lead the fight will ultimately lead to failure.

The obvious next question becomes: is there a role at all for western feminists and for the international human rights community as a whole? The answer lies in perspective and interpretation. Whenever possible, efforts towards change must be implemented at the grassroots and community level. Thus, international concern about genital cutting is best channeled towards supporting African women in their grassroots efforts for change within their countries. Initially, the international community that has been marked by Muslims as anti-cultural must use their knowledge and skills to help in supporting the training and education programs of the African grassroots programs. While the programs need to be developed by individual communities, others who want to help may use their knowledge in areas of health and training expertise to add to the programs as needed. Funds and supplies are possible ways to contribute.

This is not intended to imply that legislation and the legal community should retreat, never to return to the work of eradication in the

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<sup>167</sup> See Micere Githae Mugo, *Elitist Anti-Circumcision Discourse as Mutilating and Anti-Feminist*, 47 CASE W. RES. L. REV. 461, 467 (1997) (stating that in the final analysis it is imperative for the oppressed to liberate themselves).

future. Rather, legal means are a necessary part of the final solution. Asylum and refugee laws favorable to those seeking refuge from the forced practice are a possible present legal contribution. It is only suggested that it is necessary to remove the threats of legal enforcement from the table and allow the educational steps to work under conditions that are less politically charged. Once African leaders and Muslim communities within the practicing countries are able to learn of the health concerns, understand the myths surrounding the perpetuation of the practice and find new ways to celebrate and initiate their girls and women into their communities, laws will have a more effective place in controlling the practice. The effectiveness of the legal norms through both international treaties and conventions as well as regionally and domestically through individual country laws will be more effective and farther reaching with the support of educational and alternative programs.

## VI. CONCLUSION

It is imperative that the international legal community takes a step back from leading the fight against FGC and allows other voices to take a lead role in this effort. The cultural arguments have become too riddled with ethnic and traditional resentment and have only worked to taint the legal community and shroud it with illegitimacy. Defining the role of advocates for universal human rights and feminists is difficult, but necessary, in order to reach the ultimate goal of eradication. In analyzing the arguments of both universalism and cultural relativism, it becomes clear that this adversarial dialogue must stop, as it is only detrimental. It seems that the only way to end this argument is to stop offending the Muslim communities who practice female genital cutting with legal directives shrouded in patronizing and insensitive language and to let education and training roles take center stage. By allowing the



educational programs coupled with new forms of traditions and celebrations to emerge, the global community will find itself with a better foundation from which to operate. There is a future role for international law and intergovernmental bodies that help design and implement the laws, but that role can only emerge after a foundation has been laid.